

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5805 OF 2004

N. K. P. Salve Institute of Medical Science
and Research Centre.

...Petitioner.

Vs.

The State of Maharashtra & Ors.

...Respondents.

....

Mr. V. R. Manohar, Senior Counsel with Mr. S. V. Manohar for the
Petitioner.

Mr. Pradeep Patil, A. G. P. for Respondent No.1.

Mr. Janak Dwarkadas, Amicus Curiae for the Fees Fixation
Committee.

.....

WITH
ORIGINAL SIDE

WRIT PETITION NO.1750 OF 2004

K.J. Somaiya Medical Trust & Ors.

...

Petitioners

Versus

The State of Maharashtra & Anr.

...

Respondents

.....

Mr. T. R. Subramaniam with Mr.Firdus Pooniwala i/b. M/s. Hariani
& Co. for the Petitioners.

Mr. Pradeep Patil, A. G. P. for Respondent No.1.

Mr. Janak Dwarkadas, Amicus Curiae for the Fees Fixation
Committee.

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WITH

WRIT PETITION NO. 1649 OF 2004

WITH

CHAMBER SUMMONS NO.171 OF 2004

Association of Managements of Unaided
Private Medical Colleges. ...Petitioners.
Vs.
The State of Maharashtra & Ors. ...Respondents.

.....
Mr. V. R. Manohar, Senior Advocate with Mr. Firdus Pooniwala
i/b.Hariani & Co. for the Petitioners.
Mr. Pradeep Patil, A. G. P. for Respondent No.1.
Mr. Janak Dwarkadas, amicus Curiae for the Fees Fixation
Committee.
Mr. S. V. Bedekar with Mr. A.B. Ketkar for the Applicants in
Chamber Summons No. 171 of 2004.

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WITH

WRIT PETITION NO.2148 to 2150 OF 2004

Terna Public Charitable Trust & Ors. ...Petitioners.
Vs.
The State of Maharashtra & Ors. ...Respondents.

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Mr. V. R. Manohar, Senior Advocate with Mr. Firdus Pooniwala
i/b.Hariani & Co. for the Petitioners.
Mr. Pradeep Patil, A. G. P. for Respondent No.1.
Mr. Janak Dwarkadas, amicus Curiae for the Fees Fixation
Committee.

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WITH

APPELALTE SIDE

WRIT PETITION NO. 5425 OF 2004

Krishna Charitable Trust & Anr. ...Petitioners.
Vs.

The State of Maharashtra & Ors. ...Respondents.

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Mr. R.V. Govilkar for the Petitioners.

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WITH

WRIT PETITION NO. 5746 OF 2004

Maharashtr a Technical Education Society. ...Petitioners.

Vs.

The State of Maharashtra & Ors. ...Respondents.

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Mr. R. V. Govilkar for the Petitioners.

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WITH

WRIT PETITION NO. 5803 OF 2004

Pravara Medical Trust and Rural Medical College ..Petitioners.

Vs.

Shikshan Shulka Samiti & Anr. ...Respondents.

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Mr. T. N. Subramaniam with Mr. Firdus Pooniwala i/b.Hariani & Co. for the Petitioners.

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WITH

WRIT PETITION NO. 5804 OF 2004

Prakash Sikshan Prasarak Mandal & Anr. ...Petitioners.

Vs.

Shikshan Shulka Samiti & Anr. ...Respondents.

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Mr. T. N. Subramaniam with Mr.Firdus Pooniwala i/b. M/s. Hariani & Co. for the Petitioners.

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WITH

WRIT PETITION NO. 5806 OF 2004

VSPM's College of Physiotherapy.

...Petitioner.

Vs.

The State of Maharashtra & Ors.

...Respondents.

.....

Mr. V. R. Manohar, Senior Advocate with Mr. S.V. Manohar for the
Petitioner.

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WITH

WRIT PETITION NO. 5807 OF 2004

Jawaharlal Nehru Medical College, Sawangi
(Meghe), Wardha.

...Petitioner.

Vs.

The State of Maharashtra & Ors.

...Respondents.

.....

Mr. V. R. Manohar, Senior Advocate with Mr. S.V. Manohar for the
Petitioner.

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WITH

WRIT PETITION NO. 5808 OF 2004

Ravi Nair Physiotherapy College, Sawangi
(Meghe).

...Petitioner.

Vs.

The State of Maharashtra & Ors.

...Respondents.

.....

Mr. V. R. Manohar, Senior Advocate with Mr. S.V. Manohar for the
Petitioner.

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WITH

WRIT PETITION NO. 5809 OF 2004

V. S. P. M.'s Dental College & Research Centre. ...Petitioner.

Vs.

The State of Maharashtra & Ors. ...Respondents.

.....

Mr. V. R. Manohar, Senior Advocate with Mr. S.V. Manohar for the
Petitioner.

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WITH

WRIT PETITION NO. 5811 OF 2004

Sharad Pawar Dental College. ...Petitioner.

Vs.

The State of Maharashtra & Ors. ...Respondents.

.....

Mr. V. R. Manohar, Senior Advocate with Mr. S.V. Manohar for the
Petitioner.

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WITH

WRIT PETITION NO. 5813 OF 2004

Pandit Jawaharlal Nehru Memorial Institute
of Homoeopathic Medical Sciences. ...Petitioner.

Vs.

The State of Maharashtra & Ors. ...Respondents.

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Mr. V. R. Manohar, Senior Advocate with Mr. S.V. Manohar for the
Petitioner.

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WITH

WRIT PETITION NO. 5815 OF 2004

Vidharbha Youth Welfare Society's Dental
College & Hospital, Amravati. ...Petitioner.

Vs.
The State of Maharashtra & Anr. ...Respondents.

.....
Mr. V. R. Manohar, Senior Advocate with Mr. S.V. Manohar for the
Petitioner.

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WITH

WRIT PETITION NO. 5816 OF 2004

Dr.Panjabrao alias Bhausahab Deshmukh
Memorial Medical College, Amravati. ...Petitioner.

Vs.
The State of Maharashtra & Anr. ...Respondents.

.....
Mr. V. R. Manohar, Senior Advocate with Mr. S.V. Manohar for the
Petitioner.

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WITH

WRIT PETITION NO. 5818 OF 2004

Dr.J. J. Magdum Trust & Anr. ...Petitioners.

Vs.
The State of Maharashtra & Ors. ...Respondents.

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Mr. T. N. Subramaniam with Mr. Firdus Poonawala i/b. Hariani &
Co. for the Petitioners.

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WITH

WRIT PETITION NO. 5819 OF 2004

Tatyasaheb Kore Dental College &
Research Centre & Anr. ...Petitioners.

Vs.
Shikshan Shulka Samiti & Anr. ...Respondents.

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Mr. T. N. Subramaniam with Mr. Firdus Poonawala i/b. Hariani &
Co. for the Petitioners.

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WITH

WRIT PETITION NO. 5820 OF 2004

Mahatma Gandhi Mission Trust & Anr. ...Petitioners.

Vs.

The State of Maharashtra & Ors. ...Respondents.

.....

Mr. T. N. Subramaniam with Mr. Firdus Poonawala i/b. Hariani &
Co. for the Petitioners.

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WITH

WRIT PETITION NO. 5821 OF 2004

Mahatma Gandhi Mission Trust & Anr. ...Petitioners.

Vs.

The State of Maharashtra & Ors. ...Respondents.

.....

Mr. T. N. Subramaniam with Mr. Firdus Poonawala i/b. Hariani &
Co. for the Petitioners.

Mr. Pradeep Patil, A. G. P. for State in all matters.

Mr. Janak Dwarkadas, Amicus Curiae for the Fees Fixation
Committee in all matters.

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WITH

WRIT PETITION NO. 6047 OF 2004

Priyadarshani Rural & Adivasi Upliftment
Foundation.

...Petitioner.

Vs.

The State of Maharashtra & Anr.

...Respondents.

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WITH

WRIT PETITION NO. 6050 OF 2004

Maratha Vidya Prasarak Samaj
Nasik & Anr.

...Petitioners.

Vs.

The State of Maharashtra & Anr.

...Respondents.

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WITH

WRIT PETITION NO. 6065 OF 2004

Yerala Medical Trust & Research Centre & Anr.

...Petitioners.

Vs.

The State of Maharashtra & Anr.

...Respondents.

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WITH

WRIT PETITION NO. 6066 OF 2004

Shri Vishwanathrao Shamrao Patil
Charitable Trust & Ors.

...Petitioners.

Vs.

Shikshan Shulka Samiti & Anr.

...Respondents.

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WITH

WRIT PETITION NO. 6068 OF 2004

Ayurved Mahavidyalaya of Bhartiya
Sanskriti Dardhan Trust.

...Petitioner.

Vs.

Shikshan Shulka Samiti & Anr.

...Respondents.

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WITH

WRIT PETITION NO. 6069 OF 2004

College of Ayurved Research Centre & Pune Dist.
 Asso.Ayurved Mahavidyalaya & Research Centre. ...Petitioners.
 Vs.
 Shikshan Shulka Samiti & Anr. ...Respondents.

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WITH

WRIT PETITION NO. 6070 OF 2004

Sumatibai Shah Ayurved Mahavidyalaya
 Maharashtra Arogya Mandals. ...
 Petitioners.
 Vs.
 Shikshan Shulka Samiti & Anr. ...Respondents.

.....

WITH

WRIT PETITION NO. 6432 & 6433 OF 2004

Association of Managements of Unaided
 Private Medical & Dental Colleges & Ors. ...Petitioners.
 Vs.
 The State of Maharashtra & Anr. ...Respondents.

.....

Mr. T. N. Subramaniam i/b. Hariani & Co. for the Petitioners in
 W.P. 6065, 6066, 6432 and 6433 of 2004.
 Mr. Amol B. Patil with G.B. & A. G. Lohiya, R. S. Agarwal for
 Petitioners in W. P.6047/04.
 Mr. K. Y. Mandlik for the petitioners in W. P. 6050 of 2004.
 Mr. S. M. Gorwadkar for the petitioners in W.P. 6068, 6069 and
 6070 of 2004.
 Mr.A. A. Kumbhakoni, Special Counsel with Mr. R. M.Patne, A. G.
 P. for Respondent No.1 and 2.
 Mr. Janak Dwarkadas, Amicus Curiae for Fees Fixation
 Committee.

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WITH

WRIT PETITION NO. 6646 OF 2004

P.A. Inamdar & Ors.
Petitioners.

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Vs.

The State of Maharashtra & Ors.

...Respondents.

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Mr. T.N. Subramaniam with Ms. S. S.Khanzode for the Petitioners.

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CORAM : DALVEER BHANDARI,C.J. &
DR.D.Y.CHANDRACHUD, J.

August 17, 2004.

JUDGMENT : (PER DR. D. Y. CHANDRACHUD, J):

I

Managements of privately owned professional colleges imparting education in Health Science disciplines are before the Court in proceedings under Article 226 of the Constitution. They are aggrieved by the determination of fees made by a Committee constituted under the Chairmanship of Mr.Justice R.A. Jahagirdar, a former Judge of this Court. The institutions have several objections to the decision of the Committee, both in regard to the methodology and on the merits of the determination. The institutions and their managements urge that the deprivation of an opportunity of a personal hearing is a matter of prejudice to them

because were they to be given that opportunity they would have established that expenditure which the Committee proposed to disallow was legitimate and had to be allowed. The Colleges urge that the methodology and basis are at variance with judgments of the Supreme Court. They contend that the jurisdiction of the Committee is not to fix fees but to determine whether the fees proposed amount to profiteering or capitation. In the conclusion that we have arrived at, we have permitted the institutions to have an opportunity to place their objections before the Committee. The Committee is being requested to consider those objections and to render a decision within three months. In the meantime, in view of the imminent deadline for admissions, the Court has directed that admissions shall be granted on the fees allowed by the Committee subject to the undertaking of each student to pay the difference, should there be an enhancement.

II

2. On 31st October 2002, a Bench of eleven judges of the

Supreme Court delivered judgment in **T. M. A. Pai Foundation vs. State of Karnataka** (2002) SCC 481. The Court inter alia emphasised the principle of institutional autonomy and of merit based admissions in colleges imparting education leading up to professional degrees. On 14th October 2003, a Constitution Bench delivered judgment in **Islamic Academy of Education vs. State of Karnataka** (2003) 6 SCC 697. In T. M. A. Pai Foundation, the Supreme Court held that it was not open to Government to fix a rigid fee structure and, each Institution must have the freedom to fix its own fees based on the need to generate funds to run the institution and to provide facilities necessary for the benefit of students. These institutions, the Court held, must be able to generate a surplus which has to be used for the betterment and growth of the institution. The judgment laid down that a decision of the fee to be charged must be left to private educational institutions that do not seek funds from the Government and each institute would be entitled to have its own fee structure. The fee structure must be based upon the infrastructure and facilities available, investment made, salaries paid to teachers and the

staff, future plans for the expansion or betterment of the institution and such other factors. While the fees which are determined must provide funds for the growth of the institution and the development of facilities, profiteering should not be permitted. Governmental regulation was permissible in order to prevent the imposition of a capitation fee or profiteering. The surplus which is generated must be used by the institution for the betterment of education and the development of facilities.

3. In Islamic Academy of Education (supra) the Constitution Bench formulated four questions for determination, the first being whether educational institutions are entitled to fix their own fee structure. Adverting to the principles which were formulated in T. M. A. Pai Foundation, the Constitution Bench directed the State Governments to constitute in each State a Committee headed by a retired Judge of the High Court to be nominated by the Chief Justice. The Committee was to consist of a Chartered Accountant nominated by the Judge, a representative of the Medical Council of India or A. I. C. T. E., as the case may be, and the Secretary to the Government in Medical or Technical Education, as its Secretary.

The Committee was empowered to co-opt another independent person so that the total members of the Committee would be five. The parameters of the work and function of the Committee were laid down by the Supreme Court thus:

“Each educational institute must place before this Committee, well in advance of the academic year, its proposed fee structure. Alongwith the proposed fee structure all relevant documents and books of accounts must also be produced before the Committee for their scrutiny. The Committee shall then decide whether the fees proposed by that institute are justified and are not profiteering or charging capitation fee. The Committee will be at liberty to approve the fee structure or to propose some other fee which can be charged by the institute. The fee fixed by the Committee shall be binding for a period of three years, at the end of which period the institute would be at liberty to apply for revision. Once fees are fixed by the Committee, the institute cannot charge either directly or indirectly any

other amount over and above the amount fixed as fees.”
(emphasis supplied).

In the State of Maharashtra such a Committee, known as the Shikshan Shulka Samiti was constituted by a Government Resolution dated 24th September 2003. Mr. Justice R. A. Jahagirdar, a former Judge, was appointed as its Chairman on the recommendation of the Chief Justice of this Court. On 23^d December 2003, on the recommendation of the Chairman, two members were appointed to the committee viz., (i) R.A. Ajgaonkar, a Chartered Accountant and (ii) Prof. V.R. Iyer, a former Faculty Member of the Jamnalal Bajaj Institute of Management and formerly President of the Costs and Works Accountants' Institute of India. Though the resolution provided for the appointment of an officer of the I. A. S. Cadre as a full time Secretary of the Committee, this part of the resolution was not implemented. The Committee was furnished with a list of 123 Medical Colleges by the Director of Medical Education and Research. The Committee was provided with accommodation in February 2004.

4. In order to elicit information from the private Colleges, the Committee prepared a set of formats allowing each institution to summarise its accounts and financial position. The institutions were called upon to submit audited statements of account of the relevant years. The Committee has placed on the record the methodology adopted by it. The exercise culminated in the determination of fees for the medical institutions concerned. Different fees have been held allowable for each institution.

III

5. We have before us a batch of matters in which we have heard the challenge preferred by managements to the decision of the Committee. The principal submissions before the Court have been urged by Mr.V. R. Manohar and Mr. C. J. Sawant, Senior Counsel and by Mr. T. N. Subramaniam. We have also heard other Counsel appearing on behalf of several institutions. Oral submissions have been supplemented by written arguments. On behalf of the State, we have heard Mr. A. A. Kumbhakoni. Mr. J.D.

Dwarkadas, Senior Counsel was appointed as amicus curiae. The Court would wish to express its appreciation of the fair and objective assistance rendered by Counsel. In view of the urgency of the matter, we have heard the petitions for hearing and final disposal with the consent of Counsel.

6. We consider it appropriate to set out the gist of the submissions which have been urged before us in the three principal arguments placed for the consideration of the Court. The other Counsel broadly adopted the same arguments.

The Submissions :

**A. N. K. P. Salve Institute of Medical Science and Research
Centre – W.P. 5805/04:**

(i) By the judgments in T. M. A. Pai Foundation and Islamic Academy of Education, an unaided institution is entitled to determine its own rational fee structure which would provide to it

a reasonable surplus for the development of education and the expansion of the institution. What is prohibited is profiteering and the charging of a capitation fee;

(ii) The Committee did not seek the books of accounts or the auditors' report and what was sought was certified copies of the audited balance sheets of the last three years. No additional information was sought from the institutions;

(iii) The institutions were not called for personal hearing. The determination of the fee structure is a quasi judicial determination and, at the minimum, the procedure followed by the Committee should have been just and fair. The methodology which was followed by the Committee was not made known in advance to any of the institutions;

(iv) Under the decisions of the Supreme Court in T. M. A. Pai Foundation and in Islamic Academy of Education, the right to determine reasonable fees is with the management and the

proposed fee structure should be interfered with by the Committee only if it involved profiteering or capitation fee; and

(v) The Committee as a quasi judicial authority ought to have recorded the grounds and reasons for its conclusion.

7. On merits, it was sought to be urged that the income of the institution for the year 2000-01 was Rs.4 crores, while its expenditure was Rs. 7.18 crores. For 2001-02, the income was Rs. 5.33 crores while its expenditure was Rs. 7.78 crores. For 2002-03, the income was Rs. 4.64 crores whereas the expenditure was Rs. 13.39 crores. In 2002-03 the salaries of College personnel were Rs. 4.70 crores, while those of the Hospital were Rs. 1.09 crores, making a total of Rs. 5.80 crores. Hence, the expenditure on salaries alone for the year is more than the income. In addition, an amount of Rs.75 lakhs was paid on account of the Fifth Pay Commission in November 2003 which was conveyed to the Committee, but has not been taken into consideration. The Committee, it was urged, did not take

into consideration the additional burden of increments of 10% per annum resulting in an additional burden of Rs.50 lakhs per year. A hike in D.A. from 55% to 61% of salary caused an additional liability of Rs.35 lakhs. In clause 9 of its methodology, the Committee proposed to award an additional 25% of the yearly salary with reference to the salary which was paid in March 2003. There is, however, an apparent error in the report of the Committee, in that the Committee has not awarded the additional component of 25% which works out to Rs. 1.18 crores for the college. In so far as the Hospital is concerned, while the figure of salary paid is Rs. 1.09 crores, the Committee has awarded an amount of Rs. 36.39 lakhs without any justification. In fact, the institution is entitled to an additional amount of 25% over and above Rs. 1.09 crores which would work out to Rs. 1.36 crores. On the item of hospital salary alone, an amount of Rs.1 crore has to be awarded in addition. On these two items, namely hospital and college salaries, an additional amount of Rs. 2.18 crores ought to have been awarded in addition. The Trust runs Medical, Dental and Physiotherapy Institutions on which

common expenditure was incurred. While the Committee made a pro-rata allowance for the Dental college, this was disallowed to the Medical and Physiotherapy Colleges. The building and assets owned by the Trust are valued at Rs. 14.43 crores. Depreciation thereon at the rate of 10% would work out to Rs. 1.43 crores which has, however, been disallowed as the trust owns the building. Only 5% of the total expenditure has been allowed towards actual rent paid which works out to Rs. 0.82 per sq.ft. for the College and Rs. 1.13 per sq.ft. for the hospital in a metropolitan City like Nagpur. The Committee, it was urged, has also erred in adopting the divisor factor. For the year 2000-01, the intake capacity of the College for the first year was reduced from 100 to 50 students. The total intake of students in 2002 was 300 and in 2003 it was 350. The divisor, it has been urged, has, therefore, not been correctly calculated.

B. Krishna Charitable Trust, Karad : W.P.5425/04:

8. The Trust has submitted that salaries for April 2002 to

March 2003 were Rs. 333.07 lakhs. The Committee has allowed only Rs. 235.82 lakhs leaving a difference of Rs. 97.25 lakhs. The College has employed certain employees on consolidated pay and pays stipends to its resident doctors. The expenditure of Rs. 96.96 lakhs on this account has been ignored. According to the methodology of the Committee, admissible salary and wages for March 2003 should be multiplied by 15 to allow an increase of 25% on salary for 2002-03. The addition of 25%, on a total salary of Rs.837 lakhs, would be Rs.209 lakhs which has not been considered. Depreciation has been allowed to the College of Rs. 10.21 lakhs as against a claim of Rs. 26.29 lakhs. For the hospital, against a claim of Rs. 93.40 lakhs, Rs. 31.13 lakhs was admitted. The Committee has also erred in taking a divisor factor of 630 on the assumption that the College had 126 students for each of the five years. The College has 100 students who will receive education for 4.5 years of the M. B. B. S. Course, 16 students admitted for the 3 year post graduate degree courses and 10 students each admitted for 2 years for the diploma. The correct divisor factor, therefore, should have been 518. Moreover,

students who had been admitted on the basis of the judgment in Unnikrishnan' scase until 2002-03 will continue to pay the same fee.

C. K.J. Somaiya Medical Trust : W. P. 1750/04; Association of Managements of Unaided Private Medical Colleges : W. P. 5818, 5819, 5820, 5821, 6065, 6066 of 2004 and companion matters :

9. The managements in this batch of cases submit that the Government Resolution dated 24th September 2003 transgresses the parameters for the jurisdiction of the Committee laid down in the judgment of the Supreme Court in Islamic Academy of Education. The judgments of the Supreme Court in T. M. A. Pai Foundation and in Islamic Academy of Education establish that the right to fix a reasonable and rational fee structure that would generate a reasonable surplus to meet the needs of expansion and the augmentation of facilities is that of the private managements. The role of the Committee is to ensure that there is no profiteering or the charging of capitation fees. The Government

Resolution dated 24th September 2003, however, requires the Committee to prepare a formula for the fixation of tuition fees, to examine whether the proposals of the institutions are in accordance with the formula thus fixed and to arrive at a determination. This, it was urged, was contrary to the judgment of the Supreme Court. In guideline 5, the Committee has taken into account the average of the last three years' expenses or the expenses for 2002-03 "whichever were more reasonable". Counsel submitted that it was no part of the jurisdiction of the Committee to decide what was reasonable. Furthermore, in guideline 9, the salary in excess of the prescribed norms was sought to be reduced to 'correct costs' and it was urged that it was not open to the Committee to do so. The adoption of the historical cost of assets in guideline 10 was similarly sought to be questioned. Counsel urged that the Committee has fixed the fees without taking into account the minimum standards that are required to be fulfilled under the regulations of the Medical Council of India, Dental Council and the Councils regulating Homeopathy and Ayurved Courses which would lead to the withdrawal of

recognition. Projections for betterment and expansion of Institutions were not considered. Moreover, it was urged that the levy of service charges by the Government Resolution dated 24th September 2003 was in violation of the directions of the Constitution Bench in paragraph 20 of the judgment in Islamic Academy of Education. The Committee, it was urged, had erroneously, allowed a 25% increase in the salary payable during the year 2002-03 as a uniform and rigid basis for all institutions irrespective of whether the institution is old or new. A College which had commenced operations in 2003-03 will not have a full complement of staff as required for an established College with an intake capacity upto the final year. The incremental increase in staff strength has not been accounted for. Most Colleges, it was urged, started paying Fifth Pay Commission salaries after the decision in T. M. A. Pai Foundation. In view of the freedom which was given to the Colleges to fix their fee, this came into effect only after March 2003. Not taking this into account would cause serious prejudice to the institutions. Expenditure ought to be distinguished from a development fee. Development fee ought to be fixed on the

basis of projections and not on the basis of 10% historical cost and 20% of written down value. The Committee, it was urged, has not provided any explanation as to why only 5% of the operating expenses were taken into account for calculating rent. Providing for rent at the rate of 75 paise per sq.ft. or, at the highest at Rs. 1.40 per sq.ft., would not be considered reasonable by any stretch of imagination in a city such as Mumbai. The Committee had erred in declining to grant a hearing prior to the fixation of fee; it acted in violation of its own methodology; proceeded on the basis of assumptions and ad-hoc figures; failed to indicate any reason for the fixation of fees and did not consider documents and books of account though this was mandatory by the judgment of the Supreme Court.

IV

10. There can be no gainsaying the fact that the task which the Committee has to perform is complex by its nature and mammoth in its extent. After the decision of the Supreme Court

was rendered in Islamic Academy of Education on 14th August 2003, Mr. Justice R.A. Jahagirdar was appointed as Chairman of the Committee. The committee was constituted by a resolution of 24th September 2003. The task before the Committee involved 123 colleges in the Health Sciences' field alone. Two members of the Committee were appointed on 23rd December 2003. Accommodation was provided to the Committee in February 2004. The magnitude and complexity of the task involved, coupled with the approaching dead line for admissions for the Academic Year 2004-05 led the Committee to formulate a procedure which, while eliciting information would enable the Committee to discharge its function in a reasonable time frame. The Committee called upon institutions to provide information in two formats viz., Form A and B. Institutions were inter alia required to attach copies of the audited annual financial reports for the previous three years – 2000-01, 2001-02 and 2002-03. Details were sought of the total cost of the college and hospital land including actual cost, incidental charges and expenses for development. Information was sought on whether land has been made available by

Government at subsidised charges. Certified copies of the Income-tax Returns for the previous three years were also sought. Details were sought of the buildings of the College and hospital and on whether these were rented or owned by the Trust. Information was sought of the teaching staff approved by the concerned University and of whether the salary which was provided to the staff was in accordance with the Fifth Pay Commission or other norms. Statements of the salary given to the staff for the month of March 2003 were sought. The capital investment and recurring expenditure for the College, hospital and other uses was required to be disclosed and, if rented the annual expenditure was similarly to be provided. The Committee elicited other relevant information including financial information. In so far as financial information was concerned, details were sought of annual income and annual expenditure. Fixed assets details were sought in two categories viz., (i) cost data and (2) projected addition. In the event that common infrastructure was used for various colleges, the management was required to disclose the basis for apportionment of common infrastructure. Calculations of

the expenses per student for under graduate and post graduate courses were sought together with the fee that has been collected in the previous three years. The forms which have been prepared by the Committee have been placed before the Court and it is evident therefrom that relevant information that would have a bearing on the fee proposed to be charged was sought from the colleges. The Committee is justified in requiring a disclosure of information for it is on the basis of information thus available that the Committee can determine whether the fee as proposed would amount to profiteering or capitation.

V

11. On behalf of the Committee several submissions have been urged before the Court and it would be necessary, in our view, to take note of a few salient points:

-(i) In many cases exorbitant rent has been charged by the Trusts to the Medical Colleges. In some cases, the rent component of the total cost per student was in the region of Rs.50,000/- to Rs.1 lakh per year. The expenditure on rent was,

therefore, restricted to 5% of the allowable expenses. The problem of computing notional rent arose only because the institution has shown the building in the books of the Trust and not in the accounts of the College. If the buildings were shown as assets in the accounts of the College, the question of notional rent would not have arisen; instead depreciation would have been allowable as expenses;

-(ii) No College provided the Committee with “audited accounts” as required since audited accounts together with the report of the Auditor including notes, explanations and qualifications ought to have been furnished. Despite this deficiency, the accounts as given were accepted though there may have been observations by the auditor that would have affected the computation of costs which were not made known to the Committee;

-(iii) In many cases, the income and expenditure account was provided but the annexure and schedule containing the break up of

expenses and income were not furnished to the Committee even though there was a reference thereto in the body of the accounts;

-(iv) If the Fifth Pay Commission recommendations were implemented after 31st March 2003, this could not be reflected in the costs of 2002-03 and the proper course of action would have been to make the payment, show the same in the audited accounts of the year in which payment is made and to approach the Committee for revision of the fee structure.

-(v) The financial information submitted by each institution was checked, analysed and summarised into a worksheet for each college. This worksheet formed the basis of the decision of the Committee. The preparation of each worksheet involved about 2 to 3 man days. This methodology was adopted since the examination of the books of accounts of each institution would have taken several days and the task could not have been completed on schedule if any other methodology was adopted.

12. We have considered the grievances which have been urged by the Institutions before us. There has been a consensus on the part of all institutions before us that an opportunity should be granted to each of the institutions to place their objections before the Committee with the assistance of a qualified Chartered Accountant. Fairly, all the Counsel appearing before the Court have accepted that the hearing before the Committee cannot be akin to a fulfilled hearing before a Court with an attendant complement of Lawyers. We, however, do accept the submission which has been urged on behalf of the managements that a consideration by the Committee of the objections which have been urged on behalf of the private managements is necessary. We have recorded some of those objections in the earlier part of this judgment. In our view, it would be inappropriate for this Court, in the exercise of its jurisdiction under Article 226 of the Constitution to enter upon an analysis of each of the factual objections or to determine the extent to which the additional expenditure which is claimed on account of those objections should result in a justification for the enhancement of the fee in each individual case

over and above what has been allowed by the Committee. These are essentially matters of accounts which we think it appropriate to allow the managements to bring to the attention of the Committee. We, therefore, permit the managements to bring to the notice of the Committee such of the objections which they have within a period of three weeks from today. The Committee shall convene hearings at which the managements will be at liberty to place their objections before the Committee with the assistance of qualified Chartered Accountants. The managements would be at liberty to produce documents and their books of account in support, as is envisaged in the judgment of the Supreme Court. The Committee would be at liberty to call upon the institutions to disclose such further information as is required. Communications by the Committee may be addressed by registered post, facsimile, courier or e-mail. The institutions shall respond within the time stipulated failing which it shall be presumed that they have nothing further to add. There is a consensus before the Court that the Committee would be entitled to structure the hearing so as to enable it to keep control over the process while, at the same time, allowing the

managements an opportunity of placing their objections and submissions on the record with the assistance of qualified Chartered Accountants. The Committee may however, in its discretion permit an institution to be represented by Counsel in an appropriate case.

VII

13. The role of the Committee in the present case must be structured by the framework and parameters laid down by the Supreme Court in T. M. A. Pai Foundation and in Islamic Academy of Education. The Bench of 11 Judges in T. M. A. Pai Foundation has clearly laid down the principle of institutional autonomy by which managements of unaided professional institutions must have the discretion and the freedom to prescribe a reasonable fee structure. The income which the institution receives must provide reasonable and adequate resources for the growth of the institution and the development of its facilities. The extent of the regulatory power that is contemplated in the judgment in T. M. A. Pai Foundation is to prevent the charging of a capitation fee and profiteering. A reasonable revenue surplus is specifically allowable

in view of the judgment in T. M. A. Pai Foundation. Institutions are legitimately entitled to resources for betterment and development. These principles which were enunciated in T. M. A. Pai Foundation have been emphasised again in Islamic Academy of Education. The Court emphasised that the fees for each institute must be commensurate with the infrastructure and facilities available, the investment made, salaries paid to the teaching and non-teaching staff, future plans for expansion and betterment and other relevant factors. The surplus, however, cannot be diverted for any other use or purpose.

14. We leave it open to the institutions to bring to the attention of the Committee such of the objections which they may have in regard to the methodology which has been adopted by the Committee. The Committee is headed by a former Judge of this Court. The jurisdiction of the Committee is structured by the law laid down by the Supreme Court and we have no doubt that the Committee will have due regard to such of the submissions which have been urged on behalf of the managements in regard to the

exercise of that jurisdiction so as to ensure its exercise being in conformity with the law laid down by the Supreme Court. We are of the view that the Government Resolution dated 24th September 2003 cannot, therefore, be regarded by the Committee as warranting the exercise of its jurisdiction in a manner which would be at variance with the law laid down by the Supreme Court. The Committee owes its existence to the directions issued by the Supreme Court in Islamic Academy of Education. Plainly, the executive instructions contained in the Government Resolution dated 24th September 2003 cannot enlarge the jurisdiction of the Committee or confer upon it powers that would encroach upon the norm of institutional autonomy that is recognised in T. M. A. Pai Foundation and reaffirmed in Islamic Academy of Education. The essence of the jurisdiction of the Committee lies in determining whether the fees which are proposed by the managements amount to profiteering or to the charging of a capitation fee. In determining that issue, it is open to the Committee to call for all relevant information from managements. The information which was sought by the Committee must, therefore, be regarded as

information calculated towards that end and purpose. In view of the judgment of the Supreme Court in T. M. A. Pai Foundation, the role of the Committee is not that of a primary determiner of fees. The determination of fees is a function of the management and the role of the Committee is to ensure that the aforesaid determination does not transgress into profiteering and the charging of a capitation fee. Hence, while we have left it open to the private managements to place their objections before the Committee, the Committee must have regard to these basic premises which lie at the foundation of the judgment of the Supreme Court in T. M. A. Pai Foundation.

VIII

15. Before concluding, we must record our acceptance of the submission which has been urged on behalf of the managements in regard to the service charges which have been fixed in the G.R. Dated 24th September 2003. In paragraph 20 of its judgment in Islamic Academy of Education, the Supreme Court held that its direction for setting up two Committees in each State emanates under Article 142 of the Constitution which shall remain in force till

appropriate legislation is enacted by Parliament. The Supreme Court has directed that the expenses incurred on the setting up of such Committees is required to be borne by each State. The infrastructural needs and provision for allowances and remuneration of the Chairman and other members of the Committee are also to be borne by the respective State Governments. In view of these directions of the Supreme Court, the provision in the G.R. for the recovery of service charges shall have to be set aside.

IX

16. The Academic Year 2004-05 is to commence shortly. Admissions have to be completed immediately. The institutions have urged before us that they may be permitted to charge for the forthcoming Academic Year the same ad-hoc fee of 60% of the fee demanded by them, that being a direction which was issued by the Division Bench of this Court on 8th September 2003 for the previous Academic Year 2003-04. We are of the view, that such a course would not be proper at this stage. An exercise has been carried out by the Committee appointed in pursuance of the

judgment of the Supreme Court in Islamic Academy of Education.

On 8th September 2003, when this Court issued directions allowing the institutions to charge 60% of the fees demanded by them, subject to adjustment, the exercise was still to be carried out by the Committee. That exercise has been carried out. We have allowed the institutions to bring to the attention of the Committee their objections. We request the Committee to consider those objections and render its decision expeditiously, at any rate within a period of three months. In the meantime, the private managements shall grant admissions to the students on the basis of the fee as allowed by the Committee. The fees thus charged shall, however, be interim fees and will abide by the final decision of the Committee upon hearing the objections of the concerned colleges. The colleges shall while admitting students take undertakings from each of the students that in the event of the fee that has been paid by the students being enhanced by the Committee, the difference shall be paid over by the students within a period of four weeks of being called upon to do so by the respective Colleges upon receipt of the decision of the Committee.

We further direct that at this stage, the concerned colleges shall not be required to refund the difference between the fee which was charged for the academic year 2003-04 and the fee that has been allowed by the Committee. Each College would be entitled to charge the fee as allowed by the Committee while granting admissions for the year 2004-05 subject to such final adjustment as is warranted on the decision of the Committee. We dispose of these petitions with the aforesaid directions. In the circumstances, there shall be no order as to costs.

17. The parties to act on an ordinary copy of this order duly authenticated by the office of this Court.

CHIEF JUSTICE

DR.D.Y.CHANDRACHUD, J.